

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 92

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-30-2-151.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 151.2. IC 35-45-5-4.6 (Concerning the action of an interactive computer service in blocking a transmission it reasonably believes to be sent in violation of IC 35-45-5).**

SECTION 2. IC 35-45-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter:

"Gain" means the direct realization of winnings.

"Gambling" means risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of a gambling device; but it does not include participating in:

- (1) bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries; or
- (2) bona fide business transactions that are valid under the law of contracts.

"Gambling device" means:

- (1) a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance;

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- (2) a mechanism that, when operated for a consideration, does not return the same value or property for the same consideration upon each operation;
- (3) a mechanism, furniture, fixture, construction, or installation designed primarily for use in connection with professional gambling;
- (4) a policy ticket or wheel; or
- (5) a subassembly or essential part designed or intended for use in connection with such a device, mechanism, furniture, fixture, construction, or installation.

In the application of this definition, an immediate and unrecorded right to replay mechanically conferred on players of pinball machines and similar amusement devices is presumed to be without value.

"Gambling information" means:

- (1) a communication with respect to a wager made in the course of professional gambling; or
- (2) information intended to be used for professional gambling.

"Interactive computer service" means an Internet service, an information service, a system, or an access software provider that provides or enables computer access to a computer served by multiple users. The term includes the following:

- (1) A service or system that provides access or is an intermediary to the Internet.
- (2) A system operated or services offered by a library, school, state educational institution (as defined in IC 20-12-0.5-1), or private college or university.

"Operator" means a person who owns, maintains, or operates an Internet site that is used for interactive gambling.

"Profit" means a realized or unrealized benefit (other than a gain) and includes benefits from proprietorship or management and unequal advantage in a series of transactions.

SECTION 3. IC 35-45-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A person who knowingly or intentionally engages in gambling commits unlawful gambling.

(b) Except as provided in subsection (c), unlawful gambling is a Class B misdemeanor.

(c) An operator who knowingly or intentionally uses the Internet to engage in unlawful gambling:

- (1) in Indiana; or
 - (2) with a person located in Indiana;
- commits a Class D felony.

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SECTION 4. IC 35-45-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person who knowingly or intentionally:

- (1) engages in pool-selling;
- (2) engages in bookmaking;
- (3) maintains, in a place accessible to the public, slot machines, one-ball machines or variants thereof, pinball machines that award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money or merchandise pushcards, punchboards, jars, or spindles;
- (4) conducts lotteries ~~gift enterprises~~, or policy or numbers games or sells chances therein;
- (5) conducts any banking or percentage games played with cards, dice, or counters, or accepts any fixed share of the stakes therein; or
- (6) accepts, or offers to accept, for profit, money, or other property risked in gambling;

commits professional gambling, a Class D felony.

(b) An operator who knowingly or intentionally uses the Internet to:

- (1) engage in pool-selling:
 - (A) in Indiana; or
 - (B) in a transaction directly involving a person located in Indiana;
- (2) engage in bookmaking:
 - (A) in Indiana; or
 - (B) in a transaction directly involving a person located in Indiana;
- (3) maintain, on an Internet site accessible to residents of Indiana, the equivalent of:
 - (A) slot machines;
 - (B) one-ball machines or variants of one-ball machines;
 - (C) pinball machines that award anything other than an immediate and unrecorded right of replay;
 - (D) roulette wheels;
 - (E) dice tables; or
 - (F) money or merchandise pushcards, punchboards, jars, or spindles;
- (4) conduct lotteries or policy or numbers games or sell chances in lotteries or policy or numbers games:
 - (A) in Indiana; or
 - (B) in a transaction directly involving a person located in

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Indiana;

(5) conduct any banking or percentage games played with the computer equivalent of cards, dice, or counters, or accept any fixed share of the stakes in those games:

(A) in Indiana; or

(B) in a transaction directly involving a person located in Indiana; or

(6) accept, or offer to accept, for profit, money or other property risked in gambling:

(A) in Indiana; or

(B) in a transaction directly involving a person located in Indiana;

commits professional gambling over the Internet, a Class D felony.

SECTION 5. IC 35-45-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.5. (a)** A prosecuting attorney may send written notice to an operator described in section 2(c) or 3(b) of this chapter. The notice must:

(1) specify the illegal gambling activity;

(2) state that the operator has not more than thirty (30) days after the date the notice is received to remove the illegal gambling activity; and

(3) state that failure to remove the illegal gambling activity not more than thirty (30) days after receiving the notice may result in the filing of criminal charges against the operator.

A prosecuting attorney who sends a notice under this section shall forward a copy of the notice to the attorney general. The attorney general shall maintain a depository to collect, maintain, and retain each notice sent under this section.

(b) The manner of service of a notice under subsection (a) must be:

(1) in compliance with Rule 4.1, 4.4, 4.6, or 4.7 of the Indiana Rules of Trial Procedure; or

(2) by publication in compliance with Rule 4.13 of the Indiana Rules of Trial Procedure if service cannot be made under subdivision (1) after a diligent search for the operator.

(c) A notice served under subsection (a):

(1) is admissible in a criminal proceeding under this chapter; and

(2) constitutes prima facie evidence that the operator had knowledge that illegal gambling was occurring on the operator's Internet site.

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(d) A person outside Indiana who transmits information on a computer network (as defined in IC 35-43-2-3) and who knows or should know that the information is broadcast in Indiana submits to the jurisdiction of Indiana courts for prosecution under this section.

SECTION 6. IC 35-45-5-4.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.6. (a) An interactive computer service may, on its own initiative, block the receipt or transmission through its service of any commercial electronic mail message that it reasonably believes is or will be sent in violation of this chapter.

(b) An interactive computer service is not liable for such action.

SECTION 7. IC 35-45-5-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.7. (a) An interactive computer service that handles or retransmits a commercial electronic mail message has a right of action against a person who initiates or assists the transmission of the commercial electronic mail message that violates this chapter.

(b) This chapter does not provide a right of action against:

- (1) an interactive computer service;
- (2) a telephone company (as defined in IC 8-1-2-88);
- (3) a CMRS provider (as defined in IC 36-8-16.5-6);
- (4) a cable operator (as defined in 47 U.S.C. 522(5)); or
- (5) any other entity that primarily provides connectivity to an operator;

if the entity's equipment is used only to transport, handle, or retransmit information that violates this chapter and is not capable of blocking the retransmission of information that violates this chapter.

(c) It is a defense to an action under this section if the defendant shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violating this chapter.

(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:

- (1) An injunction to enjoin future violations of this chapter.
- (2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars (\$500) for each

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commercial electronic mail message that violates this chapter and that is sent by the defendant:

(A) to the plaintiff; or

(B) through the plaintiff's interactive computer service.

(3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

(1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and

(2) knows or should know that the commercial electronic mail message will be received in Indiana;

submits to the jurisdiction of Indiana courts for purposes of this chapter.

SECTION 8. [EFFECTIVE JULY 1, 2005] IC 35-45-5-2 and IC 35-45-5-3, both as amended by this act, apply only to crimes committed after June 30, 2005.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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